

REMARKS

The present application was filed on January 13, 1999 with claims 1-16. New claim 17 was added in an Amendment filed by Applicant on July 25, 2002.

In the Office Action, the Examiner rejected each of claims 1, 2 and 9-17 under 35 U.S.C. §102(e) over U.S. Patent No. 6,141,339 (hereinafter "Kaplan"), and allowed claims 3-8.

In this response, Applicant amends independent claims 1 and 9, and cancels claims 2, 15 and 16. Applicant respectfully requests reconsideration of the present application in view of the amendments and remarks.

Applicant initially notes that the Office Action is improper for failing to provide a clear indication as to whether it is non-final or final. More specifically, the Office Action at page 1 indicates that it is non-final, while at page 5, paragraph 4, indicates that it is final. This lack of clarity is improper. As a result, the Office Action should be deemed non-final, and in the event the Examiner issues another Office Action, that Action should provide a clear indication of finality or non-finality as appropriate.

With regard to the §102(e) rejection, Applicant notes that §2131 of the Manual of Patent Examining Procedure (MPEP), Eight Edition, August 2001, specifies that a given claim is anticipated "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, MPEP §2131 indicates that the cited reference must show the "identical invention . . . in as complete detail as is contained in the . . . claim," citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the Examiner has failed to establish anticipation of claims 1, 2 and 9-17 by the Kaplan reference. More specifically, it is believed that Kaplan fails to disclose "each and every element" of each of claims 1, 2 and 9-17 in "as complete detail as is contained in the . . . claim," as would be required for a proper anticipation rejection in accordance with MPEP §2131 and 35 U.S.C. §102(e).

Notwithstanding the foregoing traversal, Applicant has amended each of independent claims 1 and 9 to incorporate limitations similar to those of dependent claim 2. Claims 2, 15 and 16 have been canceled without prejudice. In view of the traversal, Applicant submits that the amendments

made herein are not made for reasons relating to patentability over Kaplan or any other art of record, but are instead made solely in order to expedite the prosecution of the application.

Applicant believes that the application is in condition for allowance, and respectfully requests the withdrawal of the §102(e) rejection.

Respectfully submitted,



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